IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.1702 OF 2004

Mr.Bajrang Parab : Petitioner.

versus

The State of Maharashtra & Anr. : Respondents.

Mr.Vijay Pradhan i/by Mr.Mukesh B. Vishwamitra for the petitioner.

Mrs.S.D.Shinde, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 31st July 2006.

ORAL ORDER

1. Heard Mr.Pradhan, the learned counsel appearing for the petitioner. Petitioner is the police officer. Respondent No.2 was an accused in a case and as such was in custody of the petitioner. Respondent No.2 thereafter made a complaint to the Magistrate that the petitioner had assaulted him while in custody with belt and stick. The Magistrate referred Respondent No.2 for medical examination to examine him and the Magistrate found that there were injuries on the

person Respondent No.2. In this background thereafter the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai issued process against the petitioner by an order dated 4th January 2003 and also against one constable Mr.Rane, who is not the petitioner in this matter, for the offences punishable under Sections 323, 324, 506, r/w 34 of the IPC.

2. The petitioner challenged this order by filing a Revision before the Sessions Court and, the Sessions Court by an order dated 3rd July 2004 dismissed the revision. It is this order that is challenged by the petitioner in the present petition.

3. When questioned, Mr.Pradhan, the learned counsel appearing for the petitioner, contended that no prosecution can be launched against the petitioner unless previous sanction is obtained as prescribed by Section 196 of the Cr.P.C. He placed reliance upon the judgment of the Supreme Court reported in **(2006) 1 SCC (Cri) 432 [Rakesh Kumar Mishra v. State of Bihar and ors.** The learned counsel Mr.Pradhan for the petitioner drew my attention, in particular to the following

portion of para 6 of that judgment :-

> "One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant."

. However, in the very same para No.6 of the Judgment of Supreme Court, the Lordships have stated that,

> "this protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act."

. Further it is stated by their Lordships in the same para that,

> "It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned."

4. Therefore, it will be clear that protection is not available in each and every case and, when in the instant case, there are allegations of assault while the man was in custody and the injuries were found on the person of the victim, then the judgment of the Supreme Court, relied upon by Mr.Pradhan cannot come to the rescue of the petitioner. What is banned, deprecated and prohibited, i.e. assaulting the prisoners or accused persons or persons in custody, cannot be done and no protection can be sought thereafter under the grab that sanction to prosecute should be obtained. Hence, there is no

merit in this petition. The petition is dismissed.

[D.G.DESHPANDE,J]